

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
2 STATE OF MONTANA

3 * * * * *

4 ALTHEA SMITH,)
5 Appellant,) OSPI 200-91
6 vs.)
7 BOARD OF TRUSTEES, JUDITH BASIN) DECISION AND ORDER
COUNTY SCHOOL DISTRICT NO. 12,)
8 Respondent.)

9 * * * * *

10 STATEMENT OF THE CASE

11 This is an appeal of the November 25, 1991 decision of the
12 Judith Basin County Superintendent of Schools denying
13 jurisdiction. That decision was subsequently appealed to this
14 Superintendent.

15 Appellant alleges error on the part of the county
16 superintendent in his denial of jurisdiction. Appellant further
17 asked that the issue of timeliness of Appellant's grievance and
18 succeeding efforts to engage the Respondent be addressed.

19 This case involves a dispute between the teacher, Smith, and
20 School District No. 12, Judith Basin County, as to the number of
21 years of teaching experience to be credited to Smith for
22 determination of her placement on the salary schedules.

23 The Collective Bargaining Agreement between the parties
24 contains a Grievance and Mediation Procedure. The procedure
25 provides that either party may present a written grievance to be

1 served on the other party within ten (10) days after the incident
2 giving rise to the grievance occurs. If the matter cannot be
3 resolved within ten (10) days after the first meeting thereon,
4 the matter may be submitted by either party to the Board of
5 Personnel Appeals.

6 Smith filed a "Grievance Regarding Salary Placement" with
7 the trustees on September 9, 1991. The grievance was denied on
8 the basis that it had not been filed within the ten (10) days
9 after the trustees' decision as required by the Professional
10 Negotiations Agreement. The trustees denied a further request
11 for a meeting also based on timeliness of the request. Smith
12 then filed with the Judith Basin County Superintendent of Schools
13 appealing the decision of the trustees as to the number of years
14 of experience eligible for salary placement and requesting the
15 county superintendent to reverse the trustees' decision and grant
16 Smith experience credit and placement on the commensurate salary
17 step. The County Superintendent declined jurisdiction and a
18 subsequent appeal was filed with this Superintendent.

19 DECISION

20 The State Superintendent of Public Instruction has
21 jurisdiction over this matter pursuant to § 20-3-107, MCA.

22 I find that the County Superintendent is without
23 jurisdiction to hear the matter and the case was properly
24 dismissed. The decision of the County Superintendent is
25 affirmed.

1 STANDARD OF REVIEW

2 The standards for review by the State Superintendent are set
3 forth in § 10.6.125, ARM. This rule was modeled upon § 2-4-704,
4 MCA, and the Montana Supreme Court has interpreted the statute
5 and the rule to mean that agency (County Superintendent) findings
6 of fact are subject to a clearly erroneous standard of review and
7 that conclusions of law are subject to an abuse of discretion
8 standard of review. Harris v Bauer, 230 Mont. 207, 749 P.2d
9 1068, at 1071, 45 St. Rptr. 147, at 151, (1988); City of Billings
10 v. Billings Firefighters, 200 Mont. 421, at 430, 651 P.2d 627, at
11 632 (1982). Further, the petitioner for review bears the burden
12 of showing prejudice by a clearly erroneous ruling. Terry v.
13 Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153
14 (1986), citing Carruthers v. Board of Horse Racing, 216 Mont.
15 184, 700 P.2d 179, at 181, 42 St. Rptr. 729 (1985). Findings are
16 binding on the court and not "clearly erroneous" if supported by
17 "substantial credible evidence in the record." Id. This has
18 been further clarified to mean that a finding is clearly
19 erroneous if a "review of the record leaves the court with the
20 definite and firm conviction that a mistake has been committed."
21 Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, 676 P.2d
22 194, at 198 (1984). A conclusion of law is controlling if it is
23 neither arbitrary nor capricious. City of Billings, 651 P.2d at
24 632.

1 DISCUSSION

2 The issue on appeal to this Superintendent is the
3 jurisdiction of the county superintendent over a dispute between
4 the parties as to Smith's placement on the District's salary
5 schedules. In addition, Smith has requested that the issue of
6 timeliness of the grievance before the board of trustees be
7 addressed.

8 This Superintendent is confined to the record established at
9 the county superintendent level. ARM 10.6.125. The matter was
10 decided on the jurisdictional issue alone and the county
11 superintendent made no findings on the issue of timeliness.
12 Therefore, this Superintendent is without authority to review any
13 decision made by the trustees on the issue of timeliness of the
14 grievance.

15 Section 20-3-210, MCA, provides that the county
16 superintendent shall hear and decide all matters of controversy
17 arising in his county as a result of decisions of the trustees of
18 a district in the county. The Superintendent of Public
19 Instruction, through her legislatively granted rulemaking powers,
20 has adopted the MAPA definition of contested case as definitive
21 of a school controversy. MCA 20-3-107, ARM 10.6.102.

22 The rule states as follows:

23 10.6.102 SCHOOL CONTROVERSY MEANS CONTESTED CASE

24 (1) Contested case means any proceeding in which
25 a determination of legal rights, duties or privileges
of a party is required by law.

1 Section 20-3-210, MCA, is statutory authority for an
2 opportunity to be heard if a contested case exists. It does not
3 of itself create a right to be heard. There must some right
4 grounded in statute, contract or constitution to warrant a right
5 to a hearing.

6 Appellant argues that the Montana Supreme Court's decision
7 in Canyon Creek Ed. Assn. v. Board of Trustees, Yellowstone
8 County School Dist. No. 4, 241 Mont. 73, 785 P.2d 201, 9 Ed. Law
9 (1990), is controlling in this case. I disagree. The issue
10 decided by the Court in Canyon Creek was whether a party could
11 bypass the administrative procedure and go directly to district
12 court. That case never discussed whether the collective
13 bargaining agreement contained any provision for dispute
14 resolution nor was there any question that a contested case
15 existed.

16 In this Superintendent's 1989 opinion, Irving v. Board of
17 Education School District No. 1, Valley County, 8 Ed. Law 57, it
18 was decided that the appellant's protests did not meet the
19 definition of school controversy and that there was no authority,
20 either statutory, contractual or constitutional, which allowed an
21 opportunity for hearing before the county superintendent. It was
22 further found that the language of § 20-3-210, MCA, does not
23 create of itself a right to review. That decision was affirmed
24 on petition for judicial review. The Montana Supreme Court
25 affirmed the lower level decisions in Irving v. School District

1 No. 1-1A, Valley County, ___ Mont. ___, 813 P.2d 417, 10 Ed.
2 Law 177 (1991). In that opinion the Court stated that there was
3 no legally recognized right in statute, contract or constitution,
4 and therefore, the administrative claim was properly dismissed.
5 Id., 10 Ed. Law at 179.

6 Unless a claimant has a case in controversy (contested
7 case), the administrative process is not invoked and the county
8 superintendent is without jurisdiction to hear the complaint and
9 the complaint must be dismissed.

10 To find that § 20-3-210, MCA, confers unlimited jurisdiction
11 on a county superintendent leads to absurd results. I cannot
12 believe that the legislature intended to subject every decision
13 of a board of trustees to judicial review. If the county
14 superintendent must hear an appeal on every decision of a board
15 of trustees, this would be the result.

16 DATED this 21 day of July, 1992.

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18 Nancy Keenan
19 NANCY KEENAN
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CERTIFICATE OF SERVICE

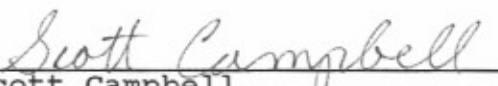
THIS IS TO CERTIFY that on this 21st day of July, 1992, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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